In the Supreme Court of the United States

OCTOBER TERM, 1924

THE UNITED STATES, APPELLANT
v.
WYCKOFF PIPE & CREOSOTING COMPANY, INC. | No. 911

APPEAL FROM THE COURT OF CLAIMS

MOTION TO REMAND TO THE COURT OF CLAIMS FOR FURTHER FINDINGS OF FACT

The appellant herein, the United States, by its Solicitor General, respectfully represents to this honorable court, as follows:

(1) Plaintiff's petition is in two counts. This motion and the statements herein have application to the first count alone. Said count is based on a contract between plaintiff and defendant dated December 10, 1917, whereby plaintiff undertook to lay wood-block floors in three separate buildings connected with the U. S. Navy Yard at Norfolk, Va., said buildings being a structural shop, a machine shop, and a foundry.

(2) The Government failed to have either of the three buildings ready to receive its floor until long

the contract work in the foundry, which the plaintiff was not permitted to perform until August, 1919, was at that time $2.98 per square yard. The reasonable value of the contract work in the machine shop which the plaintiff was not permitted to perform until January and April, 1920, was $2.28 per square yard.

The reasonable value of the flooring provided for in the original contract, at the times it was permitted to be laid, based on prices determined by governmental authority at about these times to be reasonable prices for the laying of additional flooring of the same kind, was $9,936.54 in excess of the amount plaintiff was paid therefor.

(7) The court did not make any finding as to whether or not the said sum of $6,733.82, set out in Finding No. X, as the market-price increase in the lumber and creosote oil after the same was purchased by plaintiff pursuant to contract requirement, was included in the sum of $9,936.54, set out in Finding No. XI, as the excess of the reasonable value of the flooring provided for in the original contract over the amount plaintiff was paid therefor.

(8) On June 2, 1924, the Court of Claims rendered judgment for plaintiff on the first count of its petition, pursuant to Finding No. XI, in the sum of $9,936.54.

(9) Thereafter, on July 21, 1924, defendant filed its motion to amend the findings of fact and con-

clusion of law, and to set aside the judgment, and for a new trial, a true copy of said motion being hereto annexed and marked Exhibit A, and in said motion defendant requested the court to amend Finding of Fact No. XI by adding at the end thereof a new paragraph in the following words:

> The items creating such excess of $9,936.54 in the reasonable value of the flooring include the item of $6,733.82 set out in Finding No. X as the market price increase of wood blocks and creosote oil after the same had been purchased by plaintiff pursuant to contract requirement. The actual increase in cost to plaintiff of laying the wood block floors, in excess of what such cost would have been if no delay had been caused by the Government in the performance of such work, was $3,202.72.

(10) Thereafter, on October 20, 1924, the court overruled said motion.

(11) Thereafter, on January 12, 1925, pursuant to application therefor by defendant, an appeal was granted from said court to the Supreme Court of the United States.

(12) Thereafter, on January 20, 1925, the clerk of the Court of Claims certified under seal a transcript of the record in said cause pursuant to the rulings of the Supreme Court regulating appeals from the Court of Claims.

(13) Thereafter, on January 26, 1925, defendant filed its motion in the Court of Claims to re-

quire the clerk of said court to incorporate in the appeal transcript its motion filed July 21, 1924, for amended findings of fact and for a new trial, a true copy of said motion being hereto annexed and marked "Exhibit B"; and, upon consideration of said motion the Court of Claims indorsed thereon the following order:

> The clerk will make up the record on appeal in this case in conformity with the rules of the Supreme Court regulating appeals from this court.

(14) Defendant asserts that the findings of fact as made by the Court of Claims are ambiguous, vague, and obscure and do not advise the Supreme Court as to whether or not said sum of $6,733.82, representing price increase in lumber and creosote oil held on hand by plaintiff, is included in the judgment rendered by the Court of Claims.

(15) Defendant contends that the market price increase of the lumber and creosote oil during the period they were held on hand by plaintiff for use under the contract, was not an item of expense to plaintiff and did not cause plaintiff any financial loss, and that, therefore, the Government is not liable to plaintiff for said theoretical market price increase.

Wherefore, the appellant moves this court to remand the cause to the Court of Claims and to direct said court to find:

Whether or not the items creating such excess of $9,936.54 in the reasonable value of the flooring

include the item of $6,733.82 set out in Finding No. X as the market price increase of wood blocks and creosote oil after the same had been purchased by plaintiff pursuant to contract requirement.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

MARCH, 1925.

EXHIBIT A

In the Court of Claims of the United States

WYCKOFF PIPE & CREOSOTING COMPANY, INC., plaintiff, *v.* THE UNITED STATES, DEFENDANT	No. C–19

DEFENDANT'S MOTION TO AMEND THE FINDINGS OF FACT AND THE CONCLUSION OF LAW FILED HEREIN BY THE COURT; TO SET ASIDE THE JUDGMENT FOR PLAINTIFF RENDERED ON JUNE 2, 1924, FOR $10,122.99; AND TO GRANT THE DEFENDANT A NEW TRIAL

Now comes the United States, by its Attorney General, believing the Court has erred in its findings of fact and in its conclusion of law in the above-entitled cause, and moves the Court to amend its findings of fact filed herein on June 2, 1924, by making additional findings of material facts; to vacate and set aside the judgment rendered in favor of plaintiff on said date in the sum of $10,122.99; to grant defendant a new trial on such amended findings of fact; and thereupon render judgment in accordance with such amended findings of fact.

And defendant therefore respectfully requests:

I

That the Court will amend Finding of Fact No. XI by adding at the end thereof a new paragraph in the following words:

> The items creating such excess of $9,936.54 in the reasonable value of the flooring include the item of $6,733.82 set out in Finding No. X as the market price increase of wood blocks and creosote oil after the same had been purchased by plaintiff pursuant to contract requirement. The actual increase in cost to plaintiff of laying the wood block floors, in excess of what such cost would have been if no delay had been caused by the Government in the performance of such work, was $3,202.74.

In support of this request defendant invites the attention of the Court to the testimony of witness O. Wendell Hill, for the plaintiff, cross-questions 156 to 166, record pages 63 and 64. This evidence is supported by the testimony of witness John B. Miles, for defendant, question 47, record page 117, and question 54, record page 118. The evidence of these two witnesses conclusively proves that plaintiff bought a quantity of wood blocks and creosote oil for use under the contract immediately after the contract was signed. This material was kept on hand several months by plaintiff and was eventually used in doing the contract work. The market price increase on that quantity of like material during the period it was held on hand amounted to $6,733.82. Such market price increase, so far as the plaintiff was concerned, was only theoretical because the material was on hand and paid for before the price went up, and such increase did not add any cost whatever to the performance of the work by plaintiff.

II

That the Court will amend Finding of Fact No. XIV by adding at the end thereof a new paragraph in the following words:

> The nine deliveries of blocks, to which said nine separate payments applied, were all delayed without fault of the Government. None of said delays in delivery proceeded from any such causes enumerated in the contract as would operate to relieve plaintiff from the liability for liquidated damages as prescribed in said contract. The sum of $521.25 is now retained by the Government as liquidated damages on account of said nine delayed deliveries of blocks; and said sum represents one-thirtieth (1/30) of one (1) per cent of the contract price of such blocks for each and every day of delay in the delivery thereof beyond the stipulated date of delivery.

In support of this request defendant invites the attention of the Court to the testimony of witness O. Wendell Hill, for the plaintiff, cross-questions 138 and 139, record page 61. This evidence admits the delays in delivery of all of the nine (9) shipments in question. Nowhere in the record is there any evidence showing that such delays proceeded from any causes enumerated in the contract as justifying delay, nor from any such causes as would excuse plaintiff from the liability for liquidated damages.

III

That the Court will modify its conclusion of law in accordance with such amended findings of fact.

Respectfully submitted.

ROBERT H. LOVETT,
Assistant Attorney General.
EDW. D. HAYS,
Special Assistant to the Attorney General.

BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO AMEND FINDINGS OF FACT AND FOR A NEW TRIAL

I

DEFENDANT RESPECTFULLY MAINTAINS THAT THE COURT ERRED IN RECOGNIZING THE MARKET-PRICE INCREASE OF MATERIALS AS AN ELEMENT OF DAMAGE WHEN SUCH MATERIALS WERE PURCHASED BY THE PLAINTIFF FOR USE UNDER THE CONTRACT BEFORE SUCH MARKET-PRICE INCREASE OCCURRED. THE PLAINTIFF WAS NOT IN ANY WISE AFFECTED BY SUCH INCREASE IN THE OUTSIDE MARKET

In Finding No. X the Court found, in substance: That plaintiff purchased a certain quantity of wood blocks and creosote oil for laying the floors contemplated in the contract; that said material was bought shortly after the contract was made and for uses under the contrct; and thereafter, and before these materials were actually used, the market price of that quantity of the same kind of materials had advanced $6,733.82.

In Finding No. XI the Court found, in substance: That plaintiff was delayed through fault of the Government for several months in laying the

wood-block floors contemplated in the original contract; that during such period of delay the reasonable value of such work increased $9,936.54 in excess of the amount paid plaintiff therefor.

From all the evidence in the record it is apparent that the Court, in determining the difference between the reasonable value of the work when it was done and the contract price paid for such work, included the theoretical price increase of materials on hand ($6,733.82) in the *reasonable value* increase of $9,936.54. Request No. 1 in defendant's motion, therefore, seeks to eliminate said sum of $6,733.82 from the finding of $9,936.54, as the increase in reasonable value of the contract work.

Plaintiff in its petition does not treat the contract in question as abandoned by the parties thereto; and it does not ask for compensation based on the theory of a new contract fixing a price for the original work. The suit is based on the original contract, and the declaration of damage for which plaintiff asks recovery is summed up in the concluding paragraph of the first count of the petition in the following words: *The total increased cost of the work in the three shops occasioned solely by defendant.*

The actual outlay of plaintiff for extra items of expense not anticipated when the contract was made, and independent of the theoretical market price increase of materials it held on hand under the contract, even under the most liberal interpretation of the evidence, was never estimated by plaintiff at a greater sum than $3,476.14. (See Record, p. 63, q. 156.)

When the Government got ready to release to plaintiff for floor laying the three separate jobs contemplated in the original contract, which it did on

three separate dates some months apart, it was apparent that the cost to plaintiff of doing this work would be greater than such cost would have been if the work could have been performed directly after the contract was let. It will be assumed, as to each of the three floors, that defendant's delay was responsible for such cost increase to plaintiff.

Then, at the time when any of the three floors were released to plaintiff, the law held out to plaintiff two separate remedies, namely, (1) Plaintiff could have rescinded the contract and brought suit for the breach; or, (2) Plaintiff could have resumed the work and sued for *actual damages* caused by the suspension. (See *Figh* v. *United States,* 8 C. Cls. 319; also 13 C. J. 613 to 615.)

Plaintiff did not elect to rescind. On the other hand, plaintiff and defendant agreed that the work would go on to completion and that plaintiff might retain its right to set up a claim for actual damages (*extra expense incurred*) when a detailed statement of the same could be furnished upon the completion of the work. (See Finding No. VI.)

Plaintiff on February 25, 1919, in a statement to the Public Works officer scheduled its prospective claim, in substance, as follows: 1. Extra labor cost; 2. Extra expense, including (*a*) additional bond premiums, (*b*) additional freight rates, (*c*) additional cost of sand, (d) additional quantities of expansion joints, (*e*) additional cost of creosote oil, and, (*f*) storage, insurance, and carrying charges. It added this statement: " Without passing on these claims, will you kindly acknowledge receipt of this letter and advise that we will not be prevented from urging them by reason of section 18 of the General Provisions placing a limit of sixty days on the making

of such claims." The Public Works officer acknowledged the receipt of this communication, and his statement includes the following words: "it will be satisfactory for you to make this claim for a definite amount in detail upon the completion of your work." All of this appears in detail in the Court's Finding No. VI. Thereupon plaintiff proceeded with its performance on the definite understanding that it was to receive the stipulated contract price for laying the three floors contemplated in the original contract, and that there was reserved to plaintiff for settlement at the conclusion of the work a claim for additional compensation *to the amount of the extra expense incurred.* It has already been paid the contract price for the three original floors and has also been paid one-half (½) of the extra labor expense. Its sole remaining right is to recover the unpaid additional expense actually incurred in laying the three floors in question. This limitation is put on the plaintiff not only by the law applicable to the case but by its specific understanding with the Public Works officer.

In the case of *Figh* v. *United States,* 8 Ct. Cls. 319, the substance of the Court's decision in a similar case is set out in the following syllabi:

> I. Where the Government suspends work done under a contract so as to prevent the contractors from performing their part of the contract according to its terms, they may treat it as rescinded and sue for the breach, or they may complete the work after the Government determines that it shall be resumed, and then sue for their *actual damages* caused by the suspension; and this

though they have received the full consideration of the contract.

II. Where the Government suspends work under a contract, and the contractors comply with the Government's request, both in suspending work and in subsequently resuming it, they may recover all their *actual damages occasioned by the suspension,* including loss occasioned by the nonemployment of their hands, by an advance of wages, and by the loss of lumber washed away and stolen. [Italics ours.]

In the case of *United States* v. *Smith,* 94 U. S. 214, the Court at pages 217 and 218, in discussing a case very similar to the one at bar, said:

> Here the work was stopped by order of the United States. Smith asked to be released from his contract, unless he could go on. This was refused until the expiration of sixty days, when he was allowed to resume. As between individuals, certainly, this would be considered an improper interference, and damages would be awarded *to the extent of the loss which was the necessary consequence of the suspension.* The United States must answer according to the same rule. [Italics ours.]

The evidence in this case conclusively proves that plaintiff sustained no financial outlay whatever by reason of the market price advance on the materials it held on hand during said period of advance, having purchased them before the rise in price began. Such price increase, as it applied to the materials on hand, was only theoretical so far as plaintiff

was concerned, because plaintiff sustained no expense whatever on account thereof.

From the evidence adduced herein, and from the findings of fact filed by the Court, it is apparent that the lesser sum ($6,733.82) set out in Finding No. X was wrapped up and included within the larger sum ($9,936.54) set out by the Court in Finding No. XI. It is the view of defendant that said sum of $6,733.82, representing the market price increase of materials on hand, added nothing to the expense of plaintiff and is not an allowable element of damage, and that the judgment rendered herein should be reduced by that amount.

II

WHETHER PLAINTIFF IS LIABLE FOR LIQUIDATED DAMAGES OR NOT DEPENDS, NOT UPON THE CONCLUSIONS OF THE CONTRACTING OFFICER, BUT UPON THE FACTS OF DELAY AND THE TERMS OF THE CONTRACT ITSELF

The second count in plaintiff's petition deals with a contract dated January 29, 1920, whereby plaintiff undertook to deliver a quantity of wood blocks to defendant at Watervliet Arsenal. The contract provided for liquidated damages at the rate of one-thirtieth ($\frac{1}{30}$) of one per cent (1%) of the contract price for each and every day of delay in delivery beyond the specified delivery dates. Under the contract such delays as might be due to the action of the United States, or to fires, or unseasonably severe storms, or to strikes, were to be considered as excusable delays against which no liquidated damages were to be assessed. There were nine (9) delayed deliveries. Defendant is now withholding from plaintiff $186.45 as liqui-

dated damages on the first four (4) delayed deliveries, and is withholding also $334.80 as liquidated damages on the last five (5) deliveries.

The evidence in the case makes no distinction whatever between the causes of the first four delays and the causes of the last five delays. All of the delays resulted from the failure of the railroads to promptly accept and transport the blocks to their destination, at times on account of embargoes against receiving such freight at all, and at other times on account of slowness in transportation after accepting the same. None of the delays were due to such causes as would excuse plaintiff from liability for liquidated damages.

The Court, in its Finding No. XIV, clearly recognizes all of the facts just recited; yet the Court draws a distinction between the liability of plaintiff for the item of $186.45 and its liability for the item of $334.80. The distinction is this: The contracting officer treated the first four delays, which would have involved liquidated damages to the amount of $186.45, as "*on account of an embargo placed by transportation companies on all freight shipments and the congested conditions of freight transportation,*" and deeming such delays excusable under the contract he did not withhold the item of $186.45 as liquidated damages, but permitted plaintiff to receive full payment, $186.45 of which was afterwards refunded to the Government by reason of a demand from the Accounting Office; from the last five payments for delayed deliveries the contracting officer withheld $334.80 as liquidated damages. As above stated, the evidence is clear that the same causes were responsible for each of the nine delays in delivery.

The only difference, then, between the first four delays ($186.45) and the last five delays ($334.80) was that the contracting officer waived the contract provisions applicable to said sum of $186.45. The Court rendered judgment for plaintiff as to the $186.45 item and for the defendant as to the $334.80 item. The question raised in this brief, and which defendant seeks to have answered by an amendment to Finding No. XIV as set out in Request No. 1 of its motion, is: *Whether plaintiff's liability for liquidated damages depends upon the conclusions of the contracting officer, or whether such liability depends upon the facts of delay and the terms of the contract itself.*

Since the Court has found for defendant on the $334.80 item, it is evident that the Court agrees with defendant's theory advanced in its original brief to the effect that any defaults of the railroads under Government control were to be regarded as emanating from the Government in its sovereign capacity and not from the Government in its capacity as a party to the present contract. This view is supported by *Deming* v. *United States,* 1 Ct. Cls. 190; *Jones* v. *United States,* 1 Ct. Cls. 383; *Wilson* v. *United States,* 11 Ct. Cls. 513, and *Horowitz* v. *United States,* 58 Ct. Cls. 189.

It is likewise apparent from the Court's decision as to the $334.80 item that the delays are not regarded as chargeable to any cause for which the United States is responsible nor to any excusable cause enumerated in the contract, following the case of *Hathaway & Co.* v. *United States,* 42 Ct. Cls. 267.

If the contractor had the right, *in the face of the established violation of contract terms,* to waive the

provisions of the contract as to the $186.45 item, he could also have waived those same provisions of the contract with regard to the $334.80 item which the Court has said the Government should retain.

It is true the contract says:

> In making settlements in which such charges are involved the contractor shall receive credit for all delays which the contracting officer or his successor may determine to have been due to action of the United States, and for such other delays as the same authority may decide to have been due to such unavoidable causes, including fires, unseasonably severe storms, and labor strikes in the works of the contractor, as occurred before the date or dates upon which delivery is due under the provisions of Article 1, or before the expiration of the time thereafter for which credit is allowed under this Article.

Defendant contends that, under the construction of the laws of the United States with reference to the settlement of Government obligations, the conclusions of a contracting officer as to law are not always binding against the Government. The act of March 3, 1817, 3 Stat. 366, contained a provision which was carried into the Revised Statutes as section 236 and now forms section 305 of the act of June 10, 1921, 42 Stat. 24, as follows:

> All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is con-

> cerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.

The General Accounting Office would be precluded from settling claims and accounts on its determination and conclusions if a final conclusion were determined before the claim or account reached the General Accounting Office. Such settlements involve not only a determination of facts, but conclusions of law. Therefore, the contracting officer exceeded his authority in writing into the contract any provision which would make his determination of facts and conclusions of law superior to the conclusions of the accounting officers. The legal liability of the United States is to be determined by the accounting officers upon the finding of facts made by the contracting officer. In the present case the contracting officer found that the first four delays were "*on account if an embargo placed by transportation companies on all freight shipments and the congested conditions of freight transportation.*"

Such a finding of facts by the contracting officer was undoubtedly correct, and such a finding would have applied with equal truth to the last five delays; but as to the last five delays this Court has held that such facts would not excuse liquidated damages under the laws applied to the contract. This, then, again brings up the question with regard to the first four delays as to *whether the legal conclusions of the contracting officer are superior in effect to the legal conclusions of the accounting officers.* It is submitted that the finding of a contracting officer can constitute no more than a *finding of*

facts, and is in the nature of a *special verdict* upon which proper authority will base conclusions of law. Its purpose, as are the findings of fact in this court, is to furnish the basis of a judgment, and is not the judgment itself. Such findings of fact by the contracting officer are not only not disputed by plaintiff but are proven by plaintiff's evidence. Upon that finding of facts a conclusion of law must be based for a determination of financial liability. The contract specifically provides that the facts so found did not relieve plaintiff from its liability for liquidated damages; then, can it be said that the contracting officer had the power or authority to set aside the legal effect of the contract and to give back to the plaintiff the sum of $186.45 which the terms of the contract exacted?

Prior to the creation of the General Accounting Office and requiring it to settle and adjust all claims and accounts in which the United States is concerned without direction from any administrative officer, this court in *McKnight* v. *United States,* 13 Ct. Cls. 292, speaking in reference to the accounting for public funds as the accounting system was then organized under the act of March 3, 1817, 3 Stat. 366, and after adverting to the fact that the accounting officers adjusted certain claims prior to payment and that payment was effected on their certificates, said:

> But vast sums of money are paid to parties for salaries and on other accounts by disbursing officers before the claims have passed the Treasury accounting. * * * They are all under bonds and responsible for the legality and correctness of their payments. Their

> accounts are finally settled through the accounting officers, and every item charged therein is subject to examination and adjustment, as are all other demands, and only such are allowed as are found to be sufficiently vouched for and to have been legally and rightly paid. All others are rejected, and the disbursing officer and his bondsmen are held liable for any balances found against him on such settlement.

In a long line of cases it has been held that, where an officer has been overpaid through mistake of law, such excess payment may be recovered by the Government out of subsequent sums properly payable to him. See:

> *Gratiot* v. *United States,* 15 Pet. 336.
> *McElrath* v. *United States,* 102 U. S. 426.
> *United States* v. *Burchard,* 125 U. S. 176.
> *United States* v. *Stahl,* 151 U. S. 366.

In *Wisconsin Central Railroad* v. *United States,* 164 U. S. 190, the court said:

> As a general rule, and on the grounds of public policy, the Government can not be bound by the action of its officers, who must be held to the performance of their duties within the strict limits of their legal authority, where by misconstruction of the law under which they have assumed to act unauthorized payments are made. *Whiteside* v. *United States,* 93 U. S. 247; *Hawkins* v. *United States,* 96 U. S. 689. The question is not presented as between the Government

> and its officers, or between the officer and the recipient of such payments, but as between the Government and the recipient, and is then a question whether the latter can be allowed to retain the fruits of actions not authorized by law, resulting from an erroneous conclusion by the agent of the Government as to the legal effect of the particular statutory law under or in reference to which he is proceeding.

Defendant submits that there is no finality to the *conclusion of law* which the contracting officer applied to his concededly correct *finding of facts* as to the first four delayed deliveries. His conclusion that the plaintiff was not liable for liquidated damages on the four delays mentioned did not harmonize with the provisions of the contract and was therefore contrary to law. Defendant contends that such mistake of law by a contracting officer should not operate to give plaintiff the benefit of $186.45 to which it is not entitled. The United States acts only through officers and agents whose powers and duties are carefully prescribed by statute or authorized regulations, and their authority is a matter of public law with notice of which all who deal with them are chargeable. See:

Sprague v. *United States,* 37 Ct. Cls. 447.
Hawkins v. *United States,* 96 U. S. 689.
Hume v. *United States,* 132 U. S. 406.

Conclusion

For the reasons assigned in points I and II of this brief, it is the opinion of defendant that the

judgment herein should be reduced by the amounts of $6,733.82 and $186.45.

Respectfully submitted.

ROBERT H. LOVETT,
Assistant Attorney General.
EDW. D. HAYS,
Special Assistant to the Attorney General.

Filed July 21, 1924.

A true copy.

Test this 12th day of March, 1925.

[SEAL.] F. C. KLEINSCHMIDT,
Asst. Clerk Court of Claims.

Court of Claims of the United States

No. C–19

WYCKOFF PIPE & CREOSOTING COMPANY, Inc., plaintiff *v.* THE UNITED STATES	No. C–19

I, F. C. KLEINSCHMIDT, assistant clerk, Court of Claims, certify that the annexed is a true copy of a paper, presented for filing by the defendant January 26, 1925, in the above-entitled cause, as the same remains on file and of record in this office in the above-entitled cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 12th day of March, A. D. 1925.

[SEAL.] F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

EXHIBIT B

In the Court of Claims of the United States

WYCKOFF PIPE & CREOSOTING COMPANY, Inc., plaintiff *v.* THE UNITED STATES, DEFENDANT	No. C–19

DEFENDANT'S MOTION TO INCORPORATE INTO THE RECORD MOTION FOR AMENDED FINDINGS AND NEW TRIAL

Comes now the defendant, by the Attorney General, and moves the court to order that the clerk thereof incorporate into the record, to be certified to the Supreme Court of the United States:

> Defendant's motion to Amend the Findings of Fact and the Conclusion of Law filed Herein by the Court; To Set Aside the Judgment for Plaintiff Rendered on June 2, 1924, for $10,122.99; And to Grant the Defendant a New Trial.

Said motion was filed herein on July 21, 1924, and was overruled on October 20, 1924; a copy thereof is attached hereto and made a part of this motion and marked " Exhibit A."

Defendant represents that it deems the questions of fact which are set forth in said Exhibit A to be material and necessary to properly present the issue in this case to the Appellate Court.

Respectfully submitted.

WILLIAM J. DONOVAN,
Assistant Attorney General.
EDWARD D. HAYS,
Special Assistant to the Attorney General.

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